

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

KHALID MOHAMMAD,

Plaintiff,

v.

DIAZ BROTHERS BAIL BONDS,

Defendant.

Case Number C 05-5362

ORDER<sup>1</sup> GRANTING APPLICATION  
TO PROCEED *IN FORMA PAUPERIS*

On February 1, 2006, this Court issued an order dismissing Plaintiff Khalid Mohammad's complaint with leave to amend and denying Plaintiff's application to proceed *in forma pauperis* on the ground that this Court lacked subject matter jurisdiction over the complaint. As Magistrate Judge Patricia Trumbull explained in her Order reassigning the instant action to this Court and recommending that it be dismissed with leave to amend, the Court lacked subject matter jurisdiction over the original complaint "in that the Plaintiff alleges diversity of citizenship as the sole basis for federal jurisdiction when both the Plaintiff and Defendant appear to be citizens of California." In order to establish federal diversity jurisdiction, a plaintiff must show that a dispute has arisen between citizens of different states and that the sum or value in

<sup>1</sup> This disposition is not designated for publication and may not be cited.

1 controversy exceeds \$75,000. 28 U.S.C. § 1332(a).

2 On February 2, 2006, Plaintiff filed an amended complaint. Plaintiff alleges that he is a  
 3 resident of the state of New York, *see* Ex. D (New York State identification card issued on  
 4 October 3, 2005), but currently uses the address of a California shelter for the homeless as a  
 5 mailing address because he “is currently serving a wrongful probation sentence in California and  
 6 therefore is unable to leave the State of California.” The Seventh Circuit, agreeing with four  
 7 other circuits, has held that “since domicile is a voluntary status, a forcible change in a person’s  
 8 state of residence does not alter his domicile; hence the domicile of the prisoner before he was  
 9 imprisoned is presumed to remain his domicile while he is in prison.” *Sullivan v. Freeman*, 944  
 10 F.2d 334, 337 (7th Cir. 1991) (citing *Stifel v. Hopkins*, 477 F.2d 1116 (6th Cir.1973) (per  
 11 curiam); *Housand v. Heiman*, 594 F.2d 923, 925 n. 5 (2d Cir.1979) (per curiam); *Jones v.*  
 12 *Hadican*, 552 F.2d 249 (8th Cir.1977); *Polakoff v. Henderson*, 370 F.Supp. 690, 693  
 13 (N.D.Ga.1973), *aff’d per curiam*, 488 F.2d 977 (5th Cir.1974)). Accordingly, because Plaintiff  
 14 and Defendant are citizens of different states and Plaintiff seeks damages in the amount of  
 15 \$80,000, this Court has jurisdiction over Plaintiff’s complaint pursuant to diversity jurisdiction.  
 16 Additionally, while it is not clear from its face that the complaint has potential merit, it is  
 17 possible to construe the complaint as stating a claim upon which relief may be granted.

18 On June 5, 2006, Plaintiff filed an application to proceed *in forma pauperis*. Pursuant to  
 19 28 U.S.C. § 1915, a district court may authorize the commencement of a civil action *in forma*  
 20 *pauperis* if the court is satisfied that the would-be plaintiff cannot pay the filing fees necessary to  
 21 pursue the action. 28 U.S.C. § 1915(a)(1). The Court is satisfied that Plaintiff cannot pay the  
 22 filing fee and that the instant action is not frivolous or without merit and therefore will grant the  
 23 instant application to proceed *in forma pauperis*.

24 IT IS SO ORDERED.

25 DATED: June 29, 2006

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 27  
 28   
 JEREMY FOGEL  
 United States District Judge

1 This Order has been served upon the following persons:

2 Khalid Mohammad  
3 3050 Lexington Court  
4 Marina, CA 93933  
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